

At What Cost, Justice?

Joyce Leung

A hospital worker complained to the Equal Opportunities Commission (EOC) about discriminatory treatment by the Hospital Authority. Joyce Leung*, an experienced human resources practitioner, could not help asking herself if she had indeed involved the hospital in any unlawful act. She was also worried that the process of investigation might bring undue pressure on her colleagues... Finally, Joyce was assured that as long as she acted reasonably in accordance with the law and established policies, justice would be on her side.

A health care assistant working in the hospital wards for a number of years was diagnosed with severe knee osteoarthritis**. His medical report showed that he had to undergo a kneecap replacement operation if his condition was to have any chance of improvement. However, despite much persuasion, he refused to have the operation. He was only willing to receive traditional Chinese medicine and undergo acupuncture treatment.

Lighter Duties

The work of a health care assistant in the hospital wards included feeding patients, turning them over in bed, changing their clothes, cleaning their beds, pushing wheelchairs and many other chores. This required a certain amount of physical strength. With his illness the staff found that he could no longer handle the work, and he requested to be given lighter duties. The hospital transferred him to the Central Sterile Supplies Department (CSSD), where he would be responsible for sterilization procedures for medical supplies such as operation gowns, bandages, dressings, etc. Most of the work could be done sitting down. The only walking involved consisted of pushing small trolleys between the CSSD room and the wards. He should be able to handle these tasks with ease.

However, the staff was inattentive and absent-minded in carrying out his duties. His performance was simply not up to standard, and he was given the lowest grade out of the six grades in his performance assessment. Because of his unsatisfactory performance, his colleagues had to take on extra work. They found this unfair, and their relations with him suffered as a result. On the other hand, his medical reports showed no improvement in his knee, and he could not go back to work in the wards. After two years, his supervisor had no alternative but to transfer him to the post of watchman in the staff quarters to facilitate his rehabilitation. However he only became even more disengaged and kept nodding off while on duty. His indolence spread like a contagious disease among his colleagues. This led to questions among some staff as to what should be the proper working attitude, and caused much headache to the frontline supervisors.

Beyond Tolerance

For a number of years the frontline department was bedevilled by this problem of the staff. As the general manager of human resources, I could not help asking myself, had we discriminated against him on account of his medical condition? Had we done enough to accommodate him? Were the special arrangements appropriate? Had we been over accommodating? Were we being fair to other staff? According to his medical report, he could only walk for 25 meters each time -- how many steps would that be? About 50 steps! In other words, for as long as he was not willing to undergo kneecap replacement operation, there was no way he could go back to the wards to assume the duties of a health care assistant.

Some of my colleagues were of the opinion that although the staff's contribution was limited, consideration should be given to his long years of service in the hospital. As he had only one more year to go before retirement, we might just continue to put up with him for the time being. However, after reviewing the matter carefully, I found that while the hospital had tried every means to accommodate him and made special posting arrangements on account of his medical condition, he had not appreciated the opportunities given to him. His watchman post would become redundant when the staff quarter was equipped with electronic locks. Rather than wasting more resources on him, should we not employ an assistant to relief the workload in wards? Would that not be a more efficient use of public resources in the interest of patients?

Finally, even though it was one year before his retirement, we terminated his employment contract. He complained to the EOC immediately that the hospital had discriminated against him.

Not a Case of Discrimination

Before joining the Hospital Authority, I had been responsible for human resources management in a number of public organizations and large companies. However, at the time of handling this case, the anti-discrimination legislation had only come into effect for a short time, and I had no direct experience in handling this kind of complaint. The first time we received the EOC's letter which requested us to provide answers to their many questions within two weeks, we were concerned as to what to do. We were also worried that if we failed to handle it well, 'Hospital sacks staff unreasonably' would become headline news.

While the complainant and the employer knew very well what had happened, the EOC had no such knowledge. If the EOC only had access to the complainant's side of the story, it would be difficult for the Commission to come to a fair conclusion. Only when the employer provided the EOC with the evidence, would the EOC be able to have a good grasp of the truth and arrive at a fair judgement. It was the employers' responsibility to provide such information. It was also their right to seek justice.

Immediately I sought help from our legal advisors for assistance. First we applied for an extension of the reply deadline, and then we tried our best to gather all the documents and evidence related to the case. After six weeks, we gave our first detailed reply to the EOC. Soon after, the EOC was able to come to a conclusion. The conclusion was that the post of a health care assistant was a physically demanding one, and the complainant could no longer fulfill the job requirements, since the damage to his kneecap was of a permanent nature as stated in his medical report. Furthermore, throughout the years, the hospital had tried its best to accommodate the complainant by arranging less physically demanding duties. In conclusion, the EOC decided to discontinue the case as there had been no unlawful act, and cleared the hospital of the allegation.

It is evident from this incident that as a human resources practitioner, it is important to adopt good practices, to be fair and reasonable and comply with the law. In

handling complaints such as this one, the earlier the employer provides information and the relevant details, the earlier the incident will be resolved. If the employer is worried about saying too much or saying the wrong things and therefore refrains from saying anything, how can the EOC come to a fair conclusion? I also learnt that whenever there is a problem with the staff, the employer will be judged whether reasonable accommodation has been provided, and what measures have been taken to resolve the problem. If an employer dismisses an employee without trying to resolve the problem first, it will be considered "unjustifiable".

A good human resources officer should strike a balance between the interests of the employer and the employee, act fairly and equitably in assigning duties to the staff, and must not back down for fear of difficulties. The case of the health care assistant is an effective example to other staff, that the hospital would not allow any employee to abuse the system and shy away from work. After the incident, other hospital staff became more diligent.

Discrimination in Black and White

On another occasion, an employee who came back from maternity leave kept requesting her supervisor to change her shifts at short notice. It should be pointed out that normally, the supervisors had to go through a lot of trouble in drawing up the duty rosters, in order to maintain good service to patients and to accommodate the needs of different staff. Also, the staff had to be notified well in advance of their duties. Last minute changes required adjustments involving many other colleagues. In this instance, the employee's series of requests caused the duty roster to be changed more than ten times in a month. The supervisor lost his temper, and in his anger wrote on the roster book, 'Just because you have a baby doesn't mean you can always have your way!' Because of this, the employee concerned lodged a complaint of discrimination to the EOC.

The employee's frequent and sudden requests for changes in shift duties had made life very difficult for the supervisor, and it was not altogether unjustifiable for the latter to become angry. However, the discriminatory words put down in black and white by the supervisor constituted irrefutable evidence. I can still remember clearly how the supervisor was tormented by anxiety and helplessness when he received the complaint from the EOC. In the end, following efforts at conciliation from all sides,

the supervisor had to make an apology to the employee.

If at the time of the incident, the supervisor had kept his cool, tried to communicate with the employee to understand each other's difficulties, and worked together to find a solution to the problem, what was originally a minor incident would not have turned into a dispute involving discrimination. It is clear from this incident that employers should explain more about corporate policies to the staff, and staff should try to look at matters not only from their own perspective but also that of the organization and other colleagues. Misunderstandings between employers and employees would reduce if both sides show more respect and consideration for each other.

No Entry for Male Staff

Let me share with you another case. The hospital provides a special allowance to staff responsible for handling dirty and contaminated items in the wards. It was the practice that female cleansing staff were permitted to work in both male and female wards, while male staff were only permitted to work in male wards. Because male staff could not work in mixed wards, in effect they received less allowance. A member of the male cleansing staff made a complaint of discrimination to the EOC.

Following the incident the hospital changed its arrangements to allow both male and female cleansing staff to work in the mixed wards. The change increased the number of staff available for deployment and gave supervisors greater flexibility in assigning duties. This case shows that complaints can bring about progress, and the intervention of the EOC can help an organization implement improvement to its work procedures.

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** To protect privacy of the complainant, certain facts related to the case have been altered.